question. See *Atchison, etc. R. C.* v. *O'Connor,* supra. It is believed that the decision in those cases was erroneous, and that the correct doctrine is that laid down in the Massachusetts cases. However, the court has committed itself to the recognition of the two classes of cases.

The cases of *Williams* v. *Talladega* and *Ewing* v. *Leavenworth,* above referred to, show clearly that the court does not consider the Kansas cases as denying to the states the right to exact a tax upon the privilege of doing intrastate business even in the case of a corporation engaged primarily in interstate commerce in the way of transportation. Such tax, however, must be of such a character and of such an amount as not to be a burden upon the corporation's interstate commerce, and the intimation is strong in *Williams* v. *Talladega* that it is proper and important to inquire into the profits from the domestic business with a view to determining whether or not the tax imposed can be paid out of such profits. R. W. A.

THE CONSTITUTIONALITY OF SEGREGATION ORDINANCES.—A legal writer in an article published just a year ago ventured the prophecy that the subject of the constitutionality of municipal segregation ordinances would be one of live interest in the near future. (See article by Mr. James F. Minor, 18 *Virg. L. Reg.* 561). How well-founded the prediction was, is evidenced by the very recent and very interesting cases of *Town of Ashland* v. *Coleman* (nisi prius case reported in 19 *Virg. L. Reg.* 427), and *State* v. *Gurry,* decided by the Court of Appeals of Maryland. 88 Atl. 546.

The facts of the latter case were in brief these: The city of Baltimore passed a penal ordinance, the object of which was to "preserve peace, prevent conflict and ill-feeling between the white and colored races in Baltimore city, and promote the general welfare of the city by providing, so far as practicable, for the use of separate blocks by white and colored people for residences, churches, and schools." The means for carrying out this purpose were that blocks which at the time of the passage of the ordinance were occupied by colored people exclusively should continue so to be occupied; and that blocks occupied exclusively by white people should so continue to be occupied by them. In the instant case, John Gurry, a colored man, was indicted for violation of the ordinance. The main question on appeal was whether the provisions of this measure conflicted with article 23 of the Maryland Bill of Rights and the first section of the Fourteenth Amendment of the Federal Constitution. *Held,* first, that race segregation—the object sought to be accomplished by this ordinance—was an object which properly admitted of the exercise of the police power; but, secondly, that since the ordinance prohibited a person who owned a dwelling when the ordinance was passed from moving into it simply because he was of a different color from other persons using that block as residences, it wholly ignored vested rights, and was therefore unconstitutional.

While the result of the decision is, perhaps, unexceptionable, the opinion of the court contains certain statements that are confusing if not contradictory. Grouping these, and for the sake of convenience numbering them, we have the following: First,—"the city has the power under its charter to pass ordi-

nances in the exercise of the police power, equal to legislative enactments—." Secondly, "If, then, the Legislature could pass a statute under the police power of the state, providing for the segregation of the races, as we think it could, there would seem to be no doubt that the mayor and city council of Baltimore can pass a valid ordinance having the same end in view." Thirdly, "The absolute control of property by an owner may be subject to reasonable regulations under the police powers of the state." Fourthly, "If the welfare of the city, in the minds of the council, demanded that the two races should be thus, to this extent, separated, and thereby a cause of conflict removed, the court cannot declare their action unreasonable."—"How can it be contended that the city council, charged with looking to the welfare of the city, is seeking to make an unreasonable use of the police power, when it enacts a law which, in their opinion, will tend to prevent the conflict?" Fifthly, "Without deeming it necessary to consider whether it would be possible for the Legislature itself to thus take away such vested rights, we deem the provisions as they were passed too unreasonable to permit us to assume that the Legislature intended to confer on the municipality the power to thus affect vested rights." Sixthly, "it would be difficult to conclude from the ordinance itself that the mayor and council were so convinced of the necessity for such an exercise of the police power as would justify such interference with vested rights." The fifth statement seems directly contrary to the first. If the city's ordinance is equal to legislative enactment, and that ordinance is invalid, how can it be profitable even to inquire whether the legislative enactment would be valid? Again, if the third and fourth statements are sound,—that property may be controlled by reasonable regulations, and the matter of their reasonableness as determined by the council cannot be gainsaid by the courts—, then the fifth, in which the court declares the provisions unreasonable, seems inconsistent. And the last statement seems to imply that even vested rights would fall, if the court thought the situation justified so drastic a use of the police power, though one would be warranted in inferring from statement four that the question of reasonableness was to be settled "in the minds of the council."

In justice to the able judge who wrote the opinion, it should be said that these isolated excerpts are set out merely because they furnish concrete illustrations of the inherent difficulties in any discussion of police powers and constitutional guarantees, which subjects, viewed as governmental theories, are essentially conflicting. No court yet has furnished a broad rule for determining in all cases the precise point where the police power ends, and the taking of property begins. *Gas Light Co.* v. *Hart,* 40 La. Ann. 474, 477. On the one hand, it is argued that property, within the meaning of the Fourteenth Amendment, includes both the title and the right to use; that when the right to use in a given way is vested in a citizen, it cannot be taken from him for the public good without compensation. *State* v. *Walruff,* 26 Fed. 178, 196. On the other hand, it seems clear that the Fourteenth Amendment did not take from the states their police power, or in any way weaken that power as to property rights. *Barbier* v. *Connolly,* 113 U. S. 27, 31. In answering the question whether a law deprives one of liberty or property with-

out due process of law, we must, as Justice HOLMES said, "be cautious about pressing the broad words of the Fourteenth Amendment to a drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown easily enough to transgress a scholastic interpretation of one or another of the great guarantees in the Bill of Rights." *Noble State Bank* v. *Haskell,* 219 U. S. 104, 110. It is familiar law that the use of private property may be restricted when the city is authorized, either by charter or by statute, to preserve the public peace, if such regulation is reasonable. *City of Taunton* v. *Taylor,* 116 Mass. 254; *Bowes* v. *City of Aberdeen,* 58 Wash. 535. Moreover, a police regulation is not invalid simply because it may incidentally affect the exercise of constitutional rights. *L'Hote* v. *New Orleans,* 177 U. S. 587. As was said in a recent Nebraska case, "in all matters within the police power some compromise between the exigencies of public health and safety and the free exercise of their rights by individuals must be reached." *Anderson* v. *State,* 69 Neb. 686, 96 N. W. 149. The mere fact that a law takes away from the owner of property the right to use that property in a way which was legal at the time of its acquisition, but which the law subsequently declares to be illegal, does not necessarily render that law invalid. *Cole* v. *Village of Culbertson,* 86 Neb. 160, 125 N. W. 287.

Whatever may be said as to the view of the court in the principal case as regards "vested rights," the decision that the object of the ordinance—i. e. race segregation—may be lawfully effected, seems thoroughly sound. The enforced separation of the races by separate coach laws and separate school laws has already been sustained as a valid exercise of the police power. *Plessy* v. *Ferguson,* 163 U. S. 537. In the last cited case, it had been urged that the principle of race distinction once recognized, there would be no end to the resulting evils; that this would be to authorize legislatures "to enact laws requiring colored people to walk upon one side of the street and white people upon the other." As to this, the court said: "The reply to all this is that every exercise of the police power must be reasonable and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class." An example of unreasonable segregation is afforded by the case of *In re Lee Sing,* 43 Fed. 359, where the court declared unconstitutional a law that made it unlawful for any Chinese to locate, reside or carry on business within the city of San Francisco, "except in that district of said city and county hereinafter prescribed."

The decisions of the courts in recent years show unmistakably a tendency to increase the scope of the police powers. *Jacobson* v. *Massachusetts,* 197 U. S. 11. Sir William BLACKSTONE'S statement—"so great is the regard of the law for private property that it will not authorize the least violation of it; no, not even for the general good of the whole community" (1 COMM. 139), sounds quaint indeed to modern ears. With racial conditions in our large cities becoming more and more acute, who can say that, as time goes on, the principle enunciated in *Anderson* v. *State* (cited supra) may not be considered as better adapted to twentieth century needs, and the decision in the Maryland case denounced as ultra-conservative? D. F. M.